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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

FINJAN, INC., a Delaware Corporation,

Plaintiff,

v.

BITDEFENDER INC., a Florida Corporation,
and BITDEFENDER S.R.L., a Romanian
Corporation,

Defendants.

Case No: 4:17-cv-04790-HSG

**DEFENDANTS' JOINDER TO FINJAN,
INC'S REQUEST FOR JUDICIAL
NOTICE RE: CLAIM CONSTRUCTION**

BITDEFENDER’S JOINDER TO FINJAN’S REQUEST FOR JUDICIAL NOTICE

Bitdefender Inc. and Bitdefender S.R.L. (together, “Bitdefender”) join in Finjan, Inc.’s (“Finjan”) Request for Judicial Notice of the Claim Construction Order issued by Judge Freeman, attached hereto as Exhibit A, issued in the case *Finjan, Inc. v. Cisco Systems, Inc.*, No. 17-cv-00072-BLF (N.D. Cal.) on July 23, 2018. That Order construes terms from U.S. Patent Nos. 8,141,154 (“the ’154 Patent”), 8,677,494 (“the ’494 Patent”), and 6,804,780 (“the ’780 patent”), on which this Court held a claim construction hearing on June 6, 2018.

As Finjan noted in its Request, “the Supreme Court has stressed the particular importance of intrajurisdictional uniformity in claim construction.” *Finjan, Inc. v. Symantec Corp.*, No. 14-cv-01998-HSG, 2017 WL 550453, at *3 (citing *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996)). The interest in uniformity would seem to weigh most heavily where, as here, a court in this District issues a claim construction order shortly before another is likely to be issued in the same jurisdiction with few if any intervening legal developments. *See Rambus v. Hynix Semiconductor Inc.*, 569 F. Supp. 2d 946, 965 (N.D. Cal. 2008) (surveying cases including one promoting “considerable deference . . . to . . . prior decisions unless overruled or undermined by subsequent legal developments” (citing *Sears Petroleum & Transport Corp. v. Archer Daniels Midland Co.*, No. 5:03-CV-1120 (DEP), 2007 WL 2156251, at *8 (N.D.N.Y. July 24, 2007))).

Though Finjan asserted the importance of intrajurisdictional uniformity in its Request, Finjan did not elaborate on how Bitdefender’s and Finjan’s proposed constructions are similar to, or different from, the constructions adopted in the *Cisco* Order. The terms at issue, constructions adopted by the *Cisco* court, and constructions proposed by Bitdefender and Finjan are summarized in the following table for the convenience of the court:

Patent (Claims)	Term from <i>Cisco</i> that is Identical or Similar to Term at Issue in this Case	<i>Cisco</i> Court's Adopted Construction	Bitdefender's Proposed Construction	Finjan's Proposed Construction
'154 (1,4)	"first function" / "second function"	"substitute function" / "original function, which is different than the first function"	"a programmatic statement or instruction in the content, coded as the name of a function along with any parameters needed for the function to perform its task, requesting the services of a substitute function that was replaced for an original function within the content, at a gateway computer, prior to the content being received at the client computer" / "the original function that was replaced with the previously identified substitute function call within the content, at a gateway computer, prior to the content being received at the client computer"	No construction necessary—Plain and ordinary meaning / No construction necessary—Plain and ordinary meaning
'494 (10)	"Downloadable scanner"	"software that searches code to identify suspicious patterns or	This phrase should be construed pursuant to 35 U.S.C. § 112(6)	No construction necessary—Plain and ordinary meaning

1		suspicious computer operations”	to cover the corresponding structure disclosed in the '494 patent, namely the code scanner referred to in the '194 patent at 5:36–57, 9:20–33, and Fig. 7, and equivalents.	
2			Alternatively, “a code scanner that uses parsing techniques to decompose code into constituent operations and identifies specified operations or patterns of operations”	
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16	'780 (1,9,17,18)	“performing a hashing function on the Downloadable together with its fetched software components to generate a Downloadable ID”	“performing a hashing function on the Downloadable together with its fetched software components to generate a unique and reproducible ID for that Downloadable”	“performing a hashing function that operates across the combination of a Downloadable together with its fetched software components to transmute the Downloadable and its fetched components into a unique and reproducible ID for that Downloadable”
17				“performing a hashing function on the Downloadable together with its fetched software components to generate a Downloadable ID”
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1 Dated: August 7, 2018

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